

Before

**James C. Peck, Jr.
Arbitrator**

In the Matter of Arbitration Between:

**FRATERNAL ORDER OF POLICE,
LODGE NO. 5**

V.

**AAA Case No. 01-16-0002-3863
P/O Alex McAdams (Terminated)**

THE CITY OF PHILADELPHIA

Hearing Date: November 28, 2018

Decision Date: January 22, 2019

Appearances:

For the Union - Thomas M. Gribbin, Jr., Esq., Willig, Williams & Davidson

For the City of Philadelphia - Lisa Swiatek, Esq., City of Philadelphia, Law Department

Procedural Background

This arbitration was conducted pursuant to a collective bargaining agreement between the City of Philadelphia, Pennsylvania and Fraternal Order of Police Lodge, No. 5, which is the recognized exclusive collective bargaining representative for a unit of police officers employed by the City of Philadelphia.

The City of Philadelphia and FOP Lodge 5 are parties to a collective bargaining agreement which contains, among other things, a Grievance-Arbitration procedure (Article XXI) culminating in final and binding arbitration under the auspices of the American Arbitration Association.

The instant matter arises from a grievance filed by the Union on behalf of terminated Police Officer Alex McAdams, alleging that Officer McAdams had been terminated without just cause.¹ Officer McAdams received a Notice of Dismissal effective May 26, 2016, which alleged that Officer McAdams had engaged in Conduct Unbecoming of an Officer, Section 1-026-10, specifically, “engaging in any action that constitutes the commission of a felony or misdemeanor which carries a potential sentence of more than a year.”

This grievance was subsequently denied by the City, and when the issues of this dispute could not be resolved under the terms of the contractual grievance-arbitration procedure, the underlying grievance was referred to the American Arbitration Association for selection of a neutral arbitrator. Subsequently, by letter dated July 31, 2016, the undersigned was appointed arbitrator in this matter.

An evidentiary hearing was conducted on November 28, 2018, at the offices of the American Arbitration Association, 230 South Broad Street, 12th Floor, Philadelphia, PA 19102 pursuant to a Notice of Hearing which issued on June 15, 2018. Both parties were represented by counsel, and at hearing were afforded the opportunity to examine and cross-examine witnesses, and to introduce relevant exhibits. The Grievant, former Police Officer Alex McAdams, was present and participated fully in the proceeding. Both parties made oral arguments on the record.

Issues

Did the City of Philadelphia violate the express terms of the collective bargaining agreement by discharging Police Officer Alex McAdams without just cause?

If the City is found to have violated the terms of the collective bargaining agreement, what is the appropriate remedy?

Background

The Grievant in this matter, Police Officer Alex McAdams, Badge Number 9588, was hired by the Philadelphia Police Department in December 2011, and worked as a patrol officer in the 15th Police District until his termination. Officer McAdams' work history, prior to the incident which gave rise to his termination, is unremarkable, and his annual performance reviews for the years 2013, 2014, and 2015 indicate that his work performance was entirely satisfactory, with no prior discipline.

The 911 Calls:

The precipitating incident which lead to McAdams discharge occurred on March 5, 2016 when K [REDACTED] W [REDACTED], a 24-year old female, phoned the police 911 emergency number at about 2:40 AM. Ms. W [REDACTED] reported that her boyfriend, Police Officer Alex McAdams, had come to her apartment at [REDACTED], and had broken the bedroom window to gain entry. Officer McAdams was off-duty at the time of this alleged break-in. According to Ms. W [REDACTED], after breaking in, McAdams took a white gold chain with a replica police badge #9588 from her jewelry box.

Police dispatch records indicate that at 3:08 AM at least four police officers from the 7th Police District responded to this 911 call of, "Someone Breaking In".

¹ See **Joint Exhibit J-2**, in evidence.

Specifically, Sgt. D [REDACTED], along with Police Officers Z [REDACTED], R [REDACTED], and F [REDACTED] were all dispatched to the [REDACTED] address where the break-in had allegedly occurred, and all subsequently provided statements with regard to the incident.

Within two hours, as soon as it became evident that the incident involved potential misconduct by a Philadelphia Police Officer, the Internal Affairs Division (IAD) was notified. IAD Sgt. Kelly McGuire was assigned to coordinate the IAD investigation.

The complainant, K [REDACTED] W [REDACTED], was interviewed by Internal Affairs on the same morning at about 7:30 AM. It is important to note that Ms. W [REDACTED] did not appear as a witness at the instant arbitration proceeding and did not appear as a witness at grievant McAdams preliminary hearing in Municipal Court. She did however provide a six-page statement under oath as part of an Internal Affairs Division investigation of this matter.

The *American Arbitration Association, Labor Arbitration Rules*, amended and effective July 1, 2013, address the situation of evidence provided by affidavit. The Rules specifically hold, at Rule 28, "...*The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as the arbitrator deems proper after consideration of any objection made to its admission.*" I have carefully considered the Union's request to bar hearsay evidence in this matter, and decline to do so. It is from W [REDACTED] sworn statement that I have ascertained her version of the events in question.

In her sworn statement W [REDACTED] asserted that she had been in a relationship with Officer McAdams for about two months, but had told PO McAdams on the day prior that she needed to take a break from the relationship due to personal problems. She claimed that McAdams was initially supportive of her decision.

However, at 2:07 AM on March 5, 2016, PO McAdams texted W [REDACTED] to ask if she was still awake. W [REDACTED] did not respond. Shortly thereafter, McAdams sent a second

text, asking W [REDACTED] if she was still awake, and asking her to open her door. Again, W [REDACTED] did not respond.

At about 2:30 AM, W [REDACTED] heard her doorbell ringing, but ignored it, assuming that it was McAdams. She then heard the doorbell of her upstairs neighbor, H [REDACTED] B [REDACTED], and heard B [REDACTED] and McAdams having a conversation in the vestibule of the apartment building. Officer McAdams then began banging on W [REDACTED]'s door, but she continued to refuse to answer.

Shortly after this, W [REDACTED] heard McAdams pounding on the glass outside her bedroom window. W [REDACTED] stated that she was alone and cowered in her kitchen, because she was uncertain of McAdams' intentions. She stated that she then heard her bedroom window shatter and McAdams yell an expletive. Ms. W [REDACTED] then ran out the front door of her apartment and called 911. Upstairs neighbor H [REDACTED] B [REDACTED] also heard the glass breaking, and phoned 911.

According to W [REDACTED]'s account, Officer McAdams evidently followed her and approached her on the street, crying, "How could you do this to me?" W [REDACTED] says she did not respond, and McAdams left the scene.

After McAdams had departed, Ms. W [REDACTED] returned to her apartment and observed that there was blood on the doors, door handles, light switches, and carpet. There also were bloody fingerprints on her jewelry box. She noticed that the white gold necklace and police badge charm, which McAdams had given her previously, were missing from the jewelry box.

Significantly, W [REDACTED] asserted that when PO McAdams broke the bedroom window and entered she was alone in her apartment, and not with another man. Further, she specifically denied giving McAdams permission at any point that evening to enter her apartment or to "reclaim" the gold necklace and charm that he had gifted to her.

The Initial Investigation:

After the Patrol Officers from the 7th Police District arrived and concluded their initial survey of the neighborhood, they quickly determined that the perpetrator had left the scene. IAD Officers, who also arrived at the scene, interviewed both Ms. W [REDACTED] and her upstairs neighbor, H [REDACTED] B [REDACTED], who informed them about the doorbell ringing at 2:30 AM, and about her hallway conversation with PO McAdams, whom she had met previously.² B [REDACTED] reported in her sworn statement to IAD that McAdams told her that he thought W [REDACTED] had another man in her apartment.

While police were present, Ms. W [REDACTED] looked at her phone and noticed a notification that McAdams had posted a comment to Facebook, specifically:

"Glad I stuck with my gut feeling. Caught my girlfriend cheating. Both ran like cowards. Glad I got my badge neckless (sic) back. No dirty slut ho cunt is wearing my badge on their chest. I knew it!!!"

Ms. W [REDACTED] showed this Facebook post to the responding officers, and later allowed Internal Affairs investigators to copy the post from her phone.

After a brief discussion with Ms. W [REDACTED], Sgt. A [REDACTED] D [REDACTED], who was the supervisor in charge of the initial police response, determined that Officer McAdams had left the scene but was likely injured, due to the copious amounts of blood spread around the apartment. D [REDACTED] directed his fellow officers to canvas the local hospitals to see if McAdams had sought medical treatment.

Police Officer T [REDACTED] F [REDACTED] located McAdams at [REDACTED]
[REDACTED]. McAdams [REDACTED]
[REDACTED]. McAdams told Officer

² H [REDACTED] B [REDACTED], who also gave a detailed statement to IAD, asserted that she saw nobody exit the building other than the Grievant.

F [REDACTED] that he had broken glass to get his badge charm from his girlfriend who was cheating on him.

Sgt. D [REDACTED] arrived at [REDACTED] shortly after this, and instructed Officer F [REDACTED] to search the parking lot for McAdams' vehicle. PO F [REDACTED] found McAdams' black Dodge Charger, observed blood on both the interior and exterior, and arranged for the vehicle to be impounded as evidence. A subsequent search of the Dodge Charger, conducted by the Crime Scene Unit pursuant to a warrant issued by Bail Commissioner R [REDACTED], resulted in photos and blood swabs being taken, as well as the discovery of a white gold necklace and police badge charm in the trunk of the vehicle.

A search warrant was also obtained for Officer McAdams' cell phone, and the contents of the phone were downloaded by IAD. An additional search warrant was obtained for the [REDACTED] apartment, where photographs were taken and blood samples were swabbed of both the interior and exterior of the building by the Crime Scene Unit. Pursuant to a search warrant, a DNA swab was taken of Officer McAdams' inner cheek. McAdams' bloody clothing was confiscated as evidence.

The Philadelphia Police Criminalistics Unit subsequently performed a DNA analysis on this blood evidence. This analysis determined that the blood samples found at the [REDACTED] address on the sidewalk outside the bedroom window, and inside the bedroom, and the blood smears found on both the inside and outside of Officer McAdams' Dodge Charger, were all a match to the buccal swab provided by Officer McAdams, "*...to a reasonable degree of scientific certainty, and excluding an identical twin.*"

The Referral to the District Attorney's Office:

On April 27, 2016, the Internal Affairs final investigation report was sent to District Attorney's Office, where it was assigned to James Carpenter, Chief District

Attorney, Family Violence and Sexual Assault Unit. After reviewing the IAD investigatory files, DA Carpenter requested the preparation of four arrest warrants for PO McAdams, charging him with Burglary, Criminal Trespass, Theft-Unlawful Taking, and Criminal Mischief.

PO McAdams Investigatory Interview, Arrest, and Discharge:

On April 28, 2016, PO McAdams was summoned to Internal Affairs where he was informed of his Gniotek warnings and rights. McAdams, who was accompanied by his Union representative, declined to answer questions or provide a statement. IAD then provided PO McAdams with a Statement of Charges Filed and Action Taken, notifying him that he was being placed on 30-day suspension with intent to dismiss.

The Municipal Court Hearing:

On October 12, 2016, in the matter of Commonwealth v. Alex McAdams, MC-51-0012201-2016, the criminal charges against PO McAdams were heard in Philadelphia Municipal Court, Criminal Division by the Hon. James M. DeLeon, in a non-jury preliminary hearing. For reasons that will be discussed more fully *infra*, the Court dismissed the charges against PO McAdams.

Thus, the criminal proceeding against Grievant McAdams was concluded, but McAdams remained terminated from the Police Department, for allegedly violating the Police Department's Code of Conduct, which bring us to the instant arbitration case.

The Testimony at Hearing

At the arbitration hearing, both parties provided witnesses who testified under oath. What follows is a brief summary of the relevant testimony of certain witnesses. To the extent that the testimony of witnesses is not referenced, it was viewed as either

irrelevant or duplicative. All witness testimony is considered credible, unless otherwise noted.

Police Sgt. A [REDACTED] D [REDACTED] testified about responding to a report of someone breaking into a residence at [REDACTED] in the early hours of March 5, 2016. D [REDACTED] spoke with both the Complainant, Ms. W [REDACTED], and with the upstairs neighbor, and secured the crime scene. He noted the broken window at the scene, and the blood that was smeared around the apartment. D [REDACTED] later went to [REDACTED] where he helped secure the vehicle owned by PO McAdams, since it also had blood smears inside and out.

Police Officer T [REDACTED] F [REDACTED] also responded to the [REDACTED] address, and was dispatched first to [REDACTED], and later to [REDACTED] where he located PO Alex McAdams, [REDACTED]. During this encounter, McAdams remarked to PO F [REDACTED] that he had broken into his girlfriend's apartment to get his badge back. McAdams described it as a gold chain with a charm replica of his police badge. F [REDACTED] later searched the parking lot for McAdams' Dodge Charger, which he found and secured. There were blood smears visible inside and outside of the car.

Internal Affairs Sgt. Kelly McGuire, Badge #277 has been with Internal Affairs for 5 years and testified that she was called at about 4 AM on March 5, 2016 to commence an investigation of alleged misconduct by PO Alex McAdams. Sgt. McGuire interviewed Patrol Sgt. A [REDACTED] D [REDACTED], and also wrote up search warrants for PO McAdams' car, phone, home, and for the alleged crime scene.

She described how the Crime Scene team found the allegedly stolen gold charm in the trunk of McAdams car. Additionally, McGuire obtained the [REDACTED] records related to PO McAdams [REDACTED], and documented the Facebook post allegedly made by PO McAdams on the morning of the incident. Primarily, Sgt. McGuire's job was to compile and coordinate the paperwork generated

by the Internal Affairs investigation, and to forward it to the District Attorney's office for prosecution.

Richard Ross, Philadelphia's Police Commissioner since January 2016, testified as to the various considerations leading to the decision to discharge of Grievant McAdams. Ross testified that McAdams' conduct, namely engaging in actions which resulted in him being charged criminally with a "laundry list" of charges including burglary, criminal trespass, theft-unlawful taking, and criminal mischief, was "troubling" and "problematic".

Ross characterized this as misconduct which fell short of the expectations of a Philadelphia Police Officer, and rose to the level of "conduct unbecoming of a police officer". Ross specifically noted the fact that PO McAdams had unlawfully entered a home, and had taken items without permission, was unacceptable for a sworn police officer.

Finally, Commissioner Ross testified that although the instant case may not involve domestic violence, it did involve misconduct for which the Philadelphia Police arrest people every day.

Former Officer Alex McAdams, the Grievant herein, testified before me on his own behalf, about his relationship with C█████ W█████ He asserted that he had attended a party alone that evening because Ms. W█████ was ill and had begged off attending. McAdams decided to check on Ms. W█████ on his way home, because Ms. W█████ assertedly had a ██████████ Also because Ms. W█████ ██████████ which had caused problems in the past.

McAdams asserted that he rang W█████'s doorbell, but received no response, and then rang the doorbell of the upstairs neighbor and spoke briefly with her. McAdams claimed that there were lights on in W█████'s apartment, so he decided to knock on the bedroom window, which immediately broke.

McAdams asserts that immediately, Ms. W█ and an unknown male fled the apartment via the front door. McAdams followed, and briefly spoke with W█, who didn't wish to talk to him. McAdams remarked to her, "I'm here to talk to you, but if you don't want to talk, that's OK. I'm just here to collect my belongings, and I'm going to leave." W█ allegedly replied, "OK", and McAdams then went into the apartment accompanied by W█ and retrieved his tool set and the necklace with his badge number, and then left.

PO McAdams claims that he had cut himself when the window had broken, and therefore decided to ██████████. He asserted that he hadn't intended to break the bedroom window. McAdams reiterated that he had been granted permission by W█ to take back the two items he removed from W█'s apartment.

McAdams asserts that he had no idea that there was another man in W█'s apartment prior to seeing the man flee, and that he made no attempt to chase this unknown male. He further claims that at that point, he believed that his relationship with W█ was over, which is why he asked for permission to retrieve his possessions from her apartment.

McAdams asserted that since this incident, he and Ms. W█ have reconciled, and are currently engaged. However, under cross-examination, McAdams admitted that over the past several years there have been four calls to the police regarding domestic disturbances at their shared address, but that neither he nor Ms. W█ have been arrested.

Analysis and Discussion

As stated in the introduction of this Award, the issue to be decided herein is whether the City violated the terms of the collective bargaining agreement by discharging Police Officer McAdams.

The burden of proof in discharge cases is the subject of considerable debate. Typically, and certainly under the terms of the labor agreement between the Fraternal Order of Police and the City of Philadelphia, the employer is required to prove the elements of the offense for which the employee has been discharged by a **“preponderance of the evidence”**:

Black’s Law Dictionary defines this as, *“the greater weight of the evidence required in a civil (non-criminal) lawsuit for the trier of fact (jury or judge without a jury) to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.”*³ Thus, the testimony and exhibits would be placed upon the “scales of justice” and if the scales tip ever so slightly in favor of one party or the other, so must the award which follows.

This quantum of proof, however, may be inappropriate for considering cases involving discharge, particularly the termination of an otherwise satisfactory, even a short-term employee, and would appear to inadequately consider aggravating and mitigating factors, should they exist.

Some Arbitrators such as Thomas G. McConnell, Jr. and Alan Symonette have argued that discharge cases should be held to a **“beyond a reasonable doubt”** standard. *FOP, Lodge 5 and the City of Philadelphia (Clarke)*, AAA Case No. 14 390 1611 06; *FOP, Lodge 5 and the City of Philadelphia (Kurowski)*, AAA Case No. 14 390 1372 98.

This standard was first adopted in England during the “Age of Enlightenment” in the 1790s, where it was believed that, *“it is better that 99 offenders shall escape than that one innocent man be condemned.”*

Black’s Law Dictionary 161 (6th ed. 1990) defines **“beyond a reasonable doubt”** as *“...fully satisfied, entirely convinced, satisfied to a moral certainty. This*

phrase is the equivalent of the words clear, precise, and indubitable." In the past, I have utilized this "reasonable doubt" standard, and I may continue to use the "***beyond a reasonable doubt***" standard in future cases where it is appropriate.

Discharge is a penalty which has been referred to as "industrial capital punishment", or more recently as the equivalent of "permanent exile".⁴ Discharge has the effect of severing an employee where there is no longer any hope of rehabilitation. The sole purpose of discharge is to unburden the Employer from an individual whose conduct has become intolerable. Discharge abolishes the employment relationship, whereas a disciplinary suspension is designed to improve it.⁵

There is, however, a third standard somewhere between the "***beyond a reasonable doubt***" standard. This third standard makes it exceedingly difficult for an employer to rid itself of a problematic employee, and the "***preponderance of the evidence***" standard, which has the potential to provide insufficient protection to employees from arbitrary discharge.

Some arbitrators utilize the "***clear and convincing evidence***" standard, particularly where the employee has been accused of criminal conduct, or conduct of an especially opprobrious nature.⁶ Black's Law Dictionary defines this standard as, "...*Clear and convincing proof will be shown where the truth of the facts asserted is highly probable.*"

The application of this intermediate standard serves to protect an employee from removal for comparatively flimsy reasons, but would also allow an employer to exercise its prerogative to remove a demonstrably unacceptable employee, without having to prove misconduct to a mathematical certainty. This is the standard which I intend to use in the instant case.

³ See *Bemis Co.*, 127 L.A. 499 (Ross, 2010).

⁴ Schroeder, "Discharge: Is it Industrial Capital Punishment?" 37 Arb. J. No. 4, 65 (1982).

⁵ *Red Cross Blood Serv.*, 90 LA 393, 397 (Dworkin, 1988).

⁶ See *Consulate Healthcare of Cheswick*, 127 L.A. 1336 (Franckiewicz, 2010).

The use of this standard seems particularly appropriate in situations, such as this, involving a public employee who is charged with inappropriate off-duty conduct. As Commissioner Ross noted in his testimony, public officials, such as sworn police officers, are held to a higher standard than other employees in light of the employer's interest in maintaining the "public trust". Some Arbitrators considering "conduct unbecoming" allegations against law enforcement officials have adopted the "higher standard" analysis.⁷

The Employer in the instant case is the Philadelphia Police Department which daily investigates allegations of felonies such as burglary and criminal trespass; and misdemeanors such as theft and criminal mischief. Therefore, the Employer has an interest in requiring its employees to hold themselves to a "higher standard" with regard to their personal lives. This is so that members of the public can have confidence that any complaints that they bring to the police concerning incidents of this sort will be treated fairly and in accordance with the law.

Upon evaluating all of the documentary evidence, and the witness testimony at hearing, a brief summation of the evidence against PO McAdams is warranted.

I have concluded that the Grievant entered into Ms. W [REDACTED]'s residence in the wee hours of the morning, apparently without permission, resulting in at least two calls to 911 to report a break-in in progress, and the deployment of multiple patrol officers in response. The Grievant's claim that the bedroom window glass was precariously glazed, and that the window breakage was accidental, is of dubious credibility.

The Grievant's assertion that his purpose for entering Ms. W [REDACTED] residence was to check on her wellbeing, due to concerns about her health seems contrived. Indeed, without her testimony, McAdams' claim that W [REDACTED] [REDACTED], his asserted justification for seeking to enter W [REDACTED] apartment, is also hearsay. While police departments routinely conduct "welfare checks" on individuals with health concerns, I do not believe that PO McAdams was merely conducting a

⁷ See eg. City of Bremerton, 121 L.A. 915 (Reeves, 2005).

welfare check when he broke into Ms. W [REDACTED] bedroom. In this regard, the Grievant's Facebook posting seems to indicate that he had an entirely different motive for the intrusion, namely that he went to W [REDACTED] home to confirm his suspicion that W [REDACTED] was with another man. His comments to upstairs neighbor B [REDACTED] were consistent with this. The Grievant also made an admission against interest to PO F [REDACTED] at [REDACTED], spontaneously informing PO F [REDACTED] that he, "...broke glass to get his badge charm and chain from his girlfriend who was cheating on him."

The fact that the Grievant took the time to search for the necklace and charm which he had previously given Ms. W [REDACTED], and that he removed these items from W [REDACTED] home and placed them in the trunk of his car, indicates that his reasons for entering Ms. W [REDACTED] residence were not altruistic.

The analysis of this case must necessarily address the Municipal Court proceeding which resulted in dismissal in the criminal case against Officer McAdams. There are significant differences between the arbitral process and the criminal justice system.

Just as the Employer may not rely solely on the findings where a Court concludes that there was credible evidence to warrant a criminal conviction, the Union may not rely upon a Court dismissal as proof that a grievant was innocent of misconduct. The two proceedings are separate and distinct, with different standards of proof.

The Municipal Court hearing resulted in a dismissal on procedural grounds, namely that the Commonwealth attempted to rely upon hearsay statements of the complaining witness, Ms. W [REDACTED] instead of summoning her to present in-person testimony.

The Court's rationale for dismissal was that the Commonwealth should have given the Defense advance notice of its intent to reply upon hearsay evidence, so that the Defense could have exercised its right to summon Ms. W [REDACTED] to refute the

Commonwealth's *prima facie* case. This disposition of the criminal case amounted to neither a conviction nor an exoneration of PO McAdams. Rather, it is a dismissal based on a narrow legal technicality.

In situations where an Employer has conducted its own investigation, and is able to demonstrate linkage between the offending off-duty conduct and the workplace, the Employer can still establish that there is just cause for termination, even if there has been no finding of criminal culpability.

Section 1-026-10 of the Police Disciplinary Code holds that Conduct Unbecoming is, "...any action that constitutes the commission of a felony or a misdemeanor which carries a potential sentence of more than (1) year." The Code specifically notes that neither the pendency of criminal charges nor a criminal conviction are necessary for the disciplinary action to be sustained.

There is no question that PO McAdams was arrested and charged with four counts of criminal conduct, two of which were felonies. I further note that these charges were the result of an extensive internal investigation by the Internal Affairs Division, and were vetted by the Office of the Philadelphia District Attorney, which was responsible for bringing these charges to trial.

The Union appropriately points out that at the arbitration before me the City has once again failed to produce the Complainant, Ms. W█, and urges that I find for the Grievant on that basis. While I would prefer that the City present first-person witness testimony in support of its personnel action in this matter, sometimes it is not possible for the City to locate crime victims, or to bring them to testify at arbitration proceedings.

There was testimony by the Grievant that he and his accuser, Ms. W█, have for the moment resolved their interpersonal relationship issues. For this reason Ms. W█ may be a reluctant witness. However, that does not diminish the quality of the testimony that Ms. W█ provided previously to Internal Affairs.

For the purposes of this arbitration, it is sufficient that the City, which has the burden of proof, established that the Grievant was charged with felonies and misdemeanors which carried a potential for imprisonment of more than one year imprisonment. The City has clearly met this burden. However, as an observer of the criminal proceeding, I believe that McAdams was over charged, especially in light of the fact that the District Attorney did not subsequently attempt to correct the shortcomings relied upon in Municipal Court to dismiss the criminal case. In my eyes, the failure of the District Attorney to even proceed to a verdict lessens the case against McAdams.

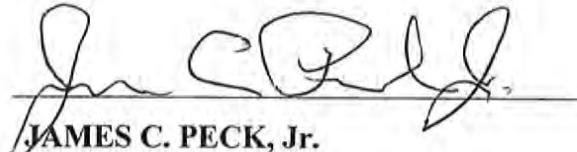
Examination of the evidence in this matter is problematic. I do not think that either McAdams or W█ have been completely honest. I am not impressed by Officer McAdams strained attempt to justify his uninvited intrusion into his girlfriend's apartment. I am convinced that McAdams only acted as he did because of his belief that the woman he considered to be his girlfriend was with another man. Despite W█'s denials, I think McAdams was correct in that belief. However, I also note that there has never been an allegation that McAdams physically abused W█ or that he threatened her in any way. Also, there is no indication that W█ has ever sought a Protection From Abuse Order.

After thorough consideration of all testimony and Exhibits, I find that there is "clear and convincing evidence" to support the administrative charges brought against Police Officer McAdams.. A police officer needs to behave better than this. McAdams actions on the night in question clearly amounted to "conduct unbecoming" a police officer. However, while significant discipline is warranted, I believe that in all of the circumstances of this case, termination is too extreme.

AWARD

Based on the evidence, and the discussion as set forth above, the undersigned makes the following award:

1. The grievance alleging that the Police Department violated the collective bargaining agreement by discharging Police Officer Alex McAdams is hereby SUSTAINED, accept as otherwise provided.
2. The City of Philadelphia is hereby directed to reinstate Officer McAdams to his prior position.
3. Officer McAdams' entire time off is to be treated as a disciplinary suspension without pay.
4. This order directing reinstatement is subject to the application of all usual and customary re-employment requirements and testing procedures, such as fitness for duty physical examinations, screening for drug and alcohol abuse, or screening for anger issues.
5. Finally, within six months of the beginning of his reinstatement, Officer McAdams is to avail himself of and complete an anger management course. That deadline may be extended by agreement of the contractual parties.



JAMES C. PECK, Jr.

Arbitrator

Wallingford, Pennsylvania

January 22, 2019